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Opinion Committee

The Honorable Daniel C. Morales
Attorney General, State of Texas
Supreme Court Building, 7th Floor
Austin, Texas 78711

Dear Dan:

Speaker Lewis has asked me whether the legislature may authorize expense payments to members of the legislature in addition to those specifically mentioned in the Texas Constitution. I request your official opinion on this question and related questions.

The Texas Constitution provides:

Members of the Legislature shall receive from the Public Treasury a salary of Six Hundred Dollars (\$600) per month. Each member shall also receive a per diem of Thirty Dollars (\$30) for each day during each Regular and Special Session of the Legislature. ... In addition to the per diem, the Members of each House shall be entitled to mileage at the same rate as prescribed by law for employees of the State of Texas.

TEX. CONST. art. III, sec. 24.

The current General Appropriations Act has several riders that authorize expense payments to members of the legislature. Those riders go beyond the mileage and per diem specifically mentioned in the Texas Constitution. See Rider #7 to the appropriations for the House of Representatives, Article V, Section 14(2), and Article V, Section 17(4). See also TEX. GOVT CODE ANN. sec. 301.030 (Vernon 1988).

My staff has uncovered numerous attorney general opinions that they have been unable to reconcile. Early opinions appeared to prohibit the legislature from authorizing expense payments or reimbursements to legislators that go beyond the constitution. See, e.g., Op. Tex. Att'y Gen. Nos. O-3778 (1941), V-84 (1947), V-211 (1947), V-772 (1949), MS-40 (1953), MS-53 (1953), WW-131 (1957),

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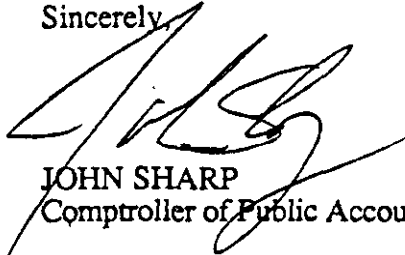
WW-148 (1957), WW-177 (1957), WW-563 (1959). Later opinions appear to have upheld those authorizations. See, e.g., Op. Tex. Att'y Gen. Nos. M-104 (1967), M-408 (1969), LA-71 (1973).

Given the importance of the issues and the lack of clear guidance from previous attorney general opinions, my specific questions are as follows:

- (1) May the legislature authorize expense payments to members of the legislature to cover the expenses incurred during a regular or special session as a supplement to the per diem and mileage mentioned in Article III, Section 24 of the Texas Constitution?
- (2) If your answer to the previous question is yes, may I honor claims from members of the legislature for expenses they incurred during a legislative session that has already ended? If so, what is the applicable statute of limitations on those claims?

Your prompt attention to these questions would be most appreciated.

Sincerely,



JOHN SHARP
Comptroller of Public Accounts

cc: The Honorable Speaker Gibson D. (Gib) Lewis